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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/851,882	05/09/2001	Dipak Ghosh	210556	4321

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LEYDIG VOIT & MAYER, LTD  
TWO PRUDENTIAL PLAZA, SUITE 4900  
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CHICAGO, IL 60601-6780

EXAMINER

YU, GINA C

ART UNIT PAPER NUMBER

1617

DATE MAILED: 11/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/851,882

Applicant(s)

GHOSH ET AL.

Examiner

Gina C. Yu

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10.
- 4) ☒ Interview Summary (PTO-413) Paper No(s). 12.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Receipt is acknowledged of Amendment filed on October 21, 2002, respectively. Claims 1-45 are pending. The finality of the previous Office action dated May 16, 2002 is withdrawn in view of a reference submitted by applicants under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on August 22, 2002, and the new grounds of rejection as following.

#### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on August 22, 2002 was filed after the mailing date of the final rejection on May 16, 2002. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

#### ***Specification***

The amendment filed on October 22, 2002 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: polysorbate 80 changed from polysorbate 20. Both compounds are well known emulsifiers with different properties. Examiner views that causing typographical error to state polysorbate 80 from polysorbate 20 does not appear to be obvious in this case.

Applicant is required to cancel the new matter in the reply to this Office Action.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-45 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over English translation, Eucerin® Q10 Active Nacht, Eucerin: Pressemitteilungen, October 2000.

The Beiersdorf press release information submitted by applicants on August 22, 2002, indicates that Eucerin® Q10 Active composition comprising urea and coenzyme Q10 has been commercially available since April 1998. See (English translation, Eucerin® Q10 Active Nacht, Eucerin: Pressemitteilungen, October 2000).

Also found is extrinsic evidences that support that Eucerin® Q10 Active inherently contains the ingredients recited by applicants and provides improved moisturizing effects on skin. See Product ingredients of Eucerin® Q10 Active Nachtcreme, p. 2.; See Schölermann et al. "Clinical and biophysical efficacy of a novel coenzyme Q10 containing anti-wrinkle cream", p. 25, (1) Skin moisture content and elasticity study.

While the Beiersdorf press release fails to disclose the specific weight ratio of the urea and coenzyme Q10 in Eucerin® Q10 Active, examiner views it obvious that a

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skilled artisan would have been motivated to formulate or modify a commercially known product in expectation of successfully formulate a moisturizing composition.

2. Claims 1-45 are rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention.

An issue of public use or on sale activity has been raised in this application. In order for the examiner to properly consider patentability of the claimed invention under 35 U.S.C. 102(b), additional information regarding this issue is required as follows: the formula for Eucerin® Q10 Active Nacht manufactured by Beiersdorf and the public use or sale date of the product in this country. See (English translation, Eucerin® Q10 Active Nacht, Eucerin: Pressemitteilungen, October 2000).

Applicant is reminded that failure to fully reply to this requirement for information will result in a holding of abandonment.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-45 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

No claims are allowed.

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on August 22, 2002 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS**

**MADE FINAL.** See MPEP § 609(B)(2)(i). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

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Gina C. Yu  
Patent Examiner  
November 8, 2002



SREENI PADMANABHAN  
PRIMARY EXAMINER

11/8/02